

THE HONORABLE JAMES L. ROBERT

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA

Plaintiff,

vs.

CITY OF SEATTLE

Defendant.

CASE No. C12-1282-JLR

**MEMORANDUM SUBMITTING  
CONSENSUS USE OF FORCE  
POLICIES**

**MEMORANDUM**

After 15 or more marathon negotiating sessions facilitated by the Monitor between the parties to this litigation—the United States, represented by the Department of Justice (DOJ), and the City of Seattle, represented by the City Attorney (Parties); after the exchange of 10 or more drafts and partial drafts; after many conference calls, telephone conversations, and meetings between and among the Parties and with the Monitor; after the Parties reached consensus in August 2013 and the Monitor published the use of force policies for comment; and after nearly four months in which the Monitor and the Monitoring Team performed independent research and

1 received and considered recommendations, including those of the community, the Community  
2 Police Commission, the two police unions, and others, the Monitor hereby submits the consensus  
3 Seattle Police Department (SPD) Use of Force policies 8.000 (Core Principles), 8.050  
4 (Definitions), 8.100 (Using Force) and 8.200 (Tools) (Core Principles, Definitions, Using Force  
5 and Tools are collectively attached as Exhibit A), as well as Procedural Manuals related to the  
6 use of specific weapons (8.200 POL-1 through POL-10) (attached as Exhibit B), to the reporting  
7 and investigative requirements for the first two levels of force (8.300 POL-1 through 4 and TSK  
8 1 through 12) (attached as Exhibit C), and SPD Manual 8.400 for reviewing use of force  
9 incidents (attached as Exhibit D), and the new Force Investigation Team Manual (attached as  
10 Exhibit E, Parts 1 and 2). The Monitor certifies that these consensus SPD policies satisfy the  
11 requirements of the Consent Decree entered by this Court in July 2012. The Monitor requests  
12 that this Court accept the SPD Use of Force policies and order them to be effective immediately.  
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14 The United States found a pattern or practice of excessive force by the SPD in its 2011  
15 investigation brought pursuant to the Violent Crime Control and Law Enforcement Act of 1994,  
16 42 U.S.C. § 14141, the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. § 3789d  
17 (“Safe Streets Act”), and Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d (“Title  
18 VI”).  
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20 The United States issued its findings in December 2011. DOJ and the City of Seattle (the  
21 City) thereafter held extensive, protracted, and difficult settlement negotiations resulting in the  
22 Consent Decree entered by this Court, provisionally in August 2011 and preliminarily in  
23 September 2011. In October 2012, the Court appointed the undersigned as the Monitor with the  
24 responsibilities provided for in the Consent Decree. The first order of business for the Monitor  
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1 was the formulation of new Use of Force policies which conformed to the Fourth Amendment of  
2 the Constitution and the United States Supreme Court and appellate court decisions interpreting  
3 it.

4 The Use of Force policies submitted today are congruent with Constitutional  
5 requirements. In addition, these policies embody best practice and reflect the policies and  
6 practices of the finest law enforcement agencies in the country. These policies distinguish when  
7 lethal or nonlethal force is permissible and when not. The policies are calibrated to bring about  
8 Constitutional policing without sacrificing the safety and well-being of police officers or the  
9 general public. The policies provide separate guidance for the use of different force  
10 instrumentalities—chemical weapons, tasers, batons, beanbag shotguns and the like. Finally, the  
11 policies detail the circumstances in which force is to be reported and how it is to be reviewed.  
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13 The SPD Use of Force policies reflect a consensus reached by the Parties after exhaustive  
14 (and exhausting) negotiation. There are those who argued that the policies do not go far enough  
15 and others who argued that they go too far. The United States and the City reached common  
16 ground after laborious negotiation and against the backdrop of active and passive resistance in  
17 some parts of the City and the SPD to the Consent Decree.  
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19 The leadership of the parties, including the Interim Chief of the SPD, the City Attorney,  
20 the local United States Attorney and lawyers in her office, and the Civil Rights Division in  
21 Washington, acted with mutual trust and in good faith to reach agreement on the SPD Use of  
22 Force policies. That is no mean achievement, and it is reflective of the extraordinary  
23 statesmanship and skills of the principals, lawyers, and practitioners involved. To reach  
24 agreement on these sensitive issues given the contentiousness that preceded the Consent Decree  
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1 is an outstanding accomplishment. The Monitor pays deference to the unified voice of the  
2 Parties regarding these policies.

3 The wider community and public voices were also fully heard. This Court granted a  
4 number of extensions of deadlines in order to receive input from those who formally and  
5 informally represent community views and from other persons of good faith, such as the  
6 Executive Director of the Washington State Criminal Justice Training Commission, who  
7 prepared a useful checklist and policy suggestions. (Although the checklist is not currently  
8 incorporated in the policy or procedure manuals explicitly, the Monitor will closely review the  
9 checklist and intends to incorporate its elements in training in 2014.) The Monitor briefed City  
10 Council and answered questions about these new policies. The policies were published on the  
11 Monitor's website and elsewhere to encourage comment. *The Seattle Times* and the electronic  
12 media extensively covered the promulgation of the policies for public consumption. The new  
13 SPD policies were discussed in the Monitor's First Semiannual Report.  
14

15 The Monitor also received comments from the Community Policy Commission (CPC).  
16 The Monitor received the formal comments of the CPC on November 15. In response to the  
17 CPC's draft comments (as well as similar comments from City Council and various other  
18 community groups), the Monitor condensed the document, separated out more clearly policy and  
19 procedural elements of the draft document, and assured consistency with state law  
20 considerations, as well as made other significant changes in format and language that improved  
21 the document. The Monitor responded to what it had in its possession on November 15 and non-  
22 substantive suggestions by the Parties thereafter, including suggestions that may have originated  
23 with the CPC. There will be further opportunities to consider the use of force policies and  
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1 training. Specifically, the Consent Decree requires the Parties to review the policies six months  
2 after implementation begins. This process of critical self-analysis and self-correction is a  
3 fundamental goal of the Consent Decree and will be taken seriously.

4 Finally, the Monitor and the Monitoring Team were not passive in the evaluation and  
5 consideration of these Use of Force policies. We reached out to community representatives and  
6 civil rights, civil liberties, and grassroots organizations which fought for and now live under  
7 analogs to the new Seattle use of force policies. The Monitor reviewed studies demonstrating  
8 increased community trust and public confidence in the police in the wake of implementation of  
9 essentially the same Consent Decree elsewhere. The Monitor drew upon his 22 years of  
10 experience and that of members of his staff, as well as the experience of present and former  
11 monitors and police oversight professionals, Inspectors General, ombudspersons, auditors, and  
12 members of civilian review boards and police commissions.  
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14 The Monitor and Monitoring Team researched and critiqued use of force policies in place  
15 throughout the United States, as well as model policies by leading police organizations and  
16 academicians. The Monitor consulted police trainers, including the very capable trainers in the  
17 SPD, law enforcement leaders, SPOG in Seattle and law enforcement rank-and-file in Los  
18 Angeles to make sure that the policies recommended by the parties did not compromise the  
19 safety of Seattle police officers and the public they serve.  
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21 The task of the Monitor was to duly consider if the proposed SPD Use of Force policies  
22 embody the requirements of the Consent Decree. The Monitor and the Monitoring Team have  
23 determined that the SPD Use of Force policies do so. Accordingly, the Monitor respectfully  
24 requests that this Court accept these policies and order them effective forth with.  
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1 DATED this 27th day of November, 2013.

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4 Merrick J Bobb, Monitor

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6 The Court hereby approves the consensus SPD Policies filed herewith as Exhibits A-E.

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9 DONE IN OPEN COURT this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

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12 THE HONORABLE JAMES L. ROBART  
13 UNITED STATES DISTRICT JUDGE  
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**CERTIFICATE OF SERVICE**

I certify that on the 27th day of November, 2013, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following attorneys of record:

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DATED this 27<sup>th</sup> day of November, 2013.

/s/ Carole Corona  
Carole Corona